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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/612,783	07/02/2003	Thomas J. La Rosa	38-21(53373)A	2839	
27161 MONSANTO	7590 10/04/2007 COMPANY		EXAMINER		
800 N. LINDBERGH BLVD. ATTENTION: GAIL P. WUELLNER, IP PARALEGAL, (E2NA) ST. LOUIS, MO 63167			BUI, PHUONG T		
			ART UNIT	PAPER NUMBER	
51. 20015, 11.			1638		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary Examiner		Application No.	Applicant(s)	
Private Priva		10/612,783	LA ROSA ET AL.	
The MALING DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Eachedised on the may be available under the provisions of 3 CPR 1138(b) in one with flowers may are by the timely field the communication of 1 CPR 1138(b) in one with flowers may are by the timely field the communication. Failure to region the specified above, the maximum stability people will apply set with the set or report specified above, the maximum stability people will people will be provided by the set of the communication. Failure to report which the first of the maximum stability people will be people will be set or report with the ten shapement. Set 3 CPR 1738(b) and the stability of the stability of the sound of the communication, even a timely field, may reduce passed the subject to the specification is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parts Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) □ Claim(s) ½ slare pending in the application. 4a) Of the above claim(s) is/are allowed. 5 □ Claim(s) ½ slare allowed. 5 □ Claim(s) is/are allowed. 5 □ Claim(s) is/are allowed. 6 □ Claim(s) is/are slowed. 7 □ Claim(s) is/are objected to by the Examiner. 10 □ The drawing(s) filed on is/are: all accepted or bl objected to by the Examiner. Application Papers 9 □ The specification is objected to by the Examiner. 10 □ The drawing(s) filed on is/are: all accepted or bl objected to by the Examiner. Application Papers 9 □ The drawing(s) filed on is/are: all accepted or bl objected to by the Examiner. 10 □ The drawing(s) filed on is/are: all accepted or bl objected to by the Examiner. 10 □ The drawing(s) filed on is/are: all accepted or bl objected to by the Examiner. 10 □ The drawing(s) filed on is/are: all accepted or bl ob	Office Action Summary	Examiner	Art Unit	
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Art Unit: 1638

DETAILED ACTION

Election/Restrictions

- 1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-2, drawn to a DNA construct, classified in class 435, subclass 320.1.
 - II. Claim 3, drawn to a method of producing a plant having a particular phenotype, classified in class 800, subclass 278.

In addition to an election of I or II above, Applicant is further required to elect one of the following sequences for examination:

SEQ ID NO: 1-3549 encoding SEQ ID NO:3550-7098, respectively.

The inventions are distinct, each from the other because of the following reasons:

- 2. SEQ ID NO: 1-3549 encoding SEQ ID NO:3550-7098 are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions have different effects. Each of the sequences identified by a SEQ ID NO. is chemically, structurally, biologically and functionally distinct from each other.
- 3. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of

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using that product. See MPEP § 806.05(h). In the instant case the product as claimed can be used in a materially different process of using that product. The DNAs can be used for hybridization, diagnostic or to make the corresponding polypeptides.

- 4. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper. Each sequence requires a separate sequence database search.
- 5. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

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6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuong T. Bui whose telephone number is 571-272-0793.

a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA,OR CANADA) or 571-272-1000.

Phùong T. Bui

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